

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 Punchbowl Street
Honolulu, Hawaii 96813-5097

BRENNON T. MORIOKA
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IN REPLY REFER TO:

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

**AMENDMENT TO PRIOR LAND BOARD ACTION OF
NOVEMBER 16, 2007, UNDER AGENDA ITEM M-1 AS AMENDED,
REGARDING ISSUANCE OF A DIRECT LEASE TO IMPERIUM
RENEWABLES HAWAII LLC AT KALAELOA BARBERS POINT HARBOR,
HONOULIULI, EWA, OAHU, TAX MAP KEY: 1ST DIVISION, 9-1-14:
PORTION OF 24**

At its meeting of November 16, 2007, under agenda Item M-1, the Land Board authorized as amended the issuance of a direct lease to Imperium Renewables Hawaii LLC, (IRH), as shown on the attached Exhibit "A." Harbor Lease H-08-44 was issued to IRH for 35 years for the period February 1, 2008 to January 31, 2043. Due to requirements that the lessee make substantial improvements to the premises, the Lessor agreed to waive the ground lease rent at the commencement date of the lease for a period of one year or until the lessee first physically occupies and commences operations.

The downturn in the national and global economies has presented significant challenges to Imperium to proceed at the present time in its business plans for the Hawaii operations. The company has downsized its operations and is seeking to successfully survive the current financial crisis by reducing expenditures, stabilizing its finances and wait for credit markets to improve.

IRH has expended over \$6.0 million to date on efforts to develop its Hawaii facility. The funds have been spent on engineering, permitting, environmental assessments, legal fees, staffing and other costs and demonstrate the lessee's commitment to establish a facility in Hawaii. The lease requires IRH to invest a sum of not less than \$50.0 million for leasehold improvements. Securing the financing necessary is not obtainable under the current economic climate.

The State has recently entered into a partnership with the federal Department of Energy to establish the Hawaii Clean Energy Initiative to reduce Hawaii's dependency on imported fossil fuels. Harbor Lease No. H-08-44 can provide the State with a renewable alternative to diesel petroleum. Industries such as IRH can assist Hawaii in achieving its goal of becoming energy independent through the use of renewable resources.

In recognizing the opportunities that IRH can contribute in meeting this important policy initiative, the department is agreeable to adjust the commencement date of the lease from February 1, 2008 to February 1, 2009 and the lease expiration date from January 31, 2043 to January 31, 2044. This will allow the waiver of the first year's lease rent for the twelve month period commencing February 1, 2009.

IRH has agreed to subject this adjustment to a consideration fee in the sum of \$100,000 payable to the Harbors Division in the form of a bank cashier's or certified check. Further, IRH has agreed to a condition that will enable the State or IRH to terminate the lease on or by January 31, 2010 if progress is not demonstrated by IRH to move forward with its Hawaii operations. The consideration fee shall not be construed as rent or applied to any rent that may become due under the proposed modification.

RECOMMENDATION:

That the Board amends its action of November 16, 2007, as amended, under agenda Item M-1, subject to the following terms and conditions:

1. Commencement Date: February 1, 2009, with a one-year waiver of rent until January 31, 2010.
2. Either IRH or the State may terminate the lease if on or by January 31, 2010, progress has not been made in proceeding with its Hawaii operations.
3. All other terms and conditions of the Land Board action of November 16, 2007, as amended, under agenda Item M-1, shall remain the same.

4. Such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.


Respectfully submitted,



BRENNON T. MORIOKA, Ph.D., P.E.
Director of Transportation

Attachment

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson and Member



BARRY FUKUNAGA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRENNON T. MORIOKA
BRIAN H. SEKIGUCHI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

November 16, 2007

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

ISSUANCE OF DIRECT LEASE TO IMPERIUM RENEWABLES HAWAII LLC
AT KALAELOA BARBERS POINT HARBOR, HONOLULU, EWA, OAHU
TAX MAP KEY: 1ST DIVISION, 9-1-14: PORTIONS OF 24

REQUEST:

Issuance of direct lease to Imperium Renewables Hawaii LLC to develop, construct, re-construct, operate, use, maintain and repair a bio-fuel manufacturing facility and distribute bio-fuels and related activities.

LEGAL REFERENCE:

Sections 171-11, 35, 36, and Subsection 171-59(b), Hawaii Revised Statutes.

APPLICANT:

Imperium Renewables Hawaii LLC, authorized to do business in the State of Hawaii.

LOCATION AND TAX MAP KEY:

Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu
Tax Map Key: 1st Division, 9-1-14: Portions of 24, as shown and delineated on the attached exhibit labeled Exhibit "A".

AREA:

1. Lease Parcel A, containing a land area of 11.028 acres or 480,380 square feet, more or less;

EXHIBIT "A"

AS AMENDED
Approved by the Board
at its meeting held on
November 16, 2007

[Signature]
Deputy Director

ITEM M-1

2. Non-Exclusive Easement 1 (for access purposes), containing an easement area of 824 square feet, more or less;
3. Non-Exclusive Easement 2 (for access purposes), containing an easement area of 1,978 square feet, more or less;
4. Non-Exclusive Easement 3 (for water meter purposes), containing an easement area of 746 square feet, more or less;
5. Non-Exclusive Easement 4 (for water meter purposes), containing an easement area of 1,768 square feet, more or less;
6. Non-Exclusive Easement 5 (for installation and maintenance of storm water seepage wells), containing an easement area of 30,935 square feet, more or less;
7. Non-Exclusive Easement 6 (for electrical power transmission purposes), containing an easement area of 44,085 square feet, more or less;
8. Non-Exclusive Easement 7 (for storm water drainage purposes), containing an easement area of 14,134 square feet, more or less; and,
9. Non-Exclusive Easement 8 (for transmission of biodiesel, methanol and vegetable oils), containing an easement area of 42,987 square feet, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu: Waterfront Industrial (I-3)

LAND TITLE STATUS:

Non-ceded - Acquired by the State after Statehood.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ☐ NO ☒

CURRENT USE STATUS:

Subject public land presently encumbered by:

Governor's Executive Order No. 3383, setting aside Kalaeloa Barbers Point Harbor to the control and management of the Department of Transportation, Harbors Division, for commercial maritime and maritime-related purposes.

CHARACTER OF USE:

Develop, Construct, Re-construct, Operate, Use, Maintain and Repair a Bio-Fuel Manufacturing Facility and Distribute Bio-Fuels and Related Activities.

TERM OF LEASE:

Thirty-five (35) years

LEASE COMMENCEMENT DATE:

To be determined by the Director of Transportation.

ANNUAL GROUND AND EASEMENT LEASE RENTAL:

Annual Rental for First Five (5)-Year Period (Years 1 through 5): To be determined by an independent real property appraiser who is licensed by the State of Hawaii as a "Certified General Appraiser" whose services shall be: (a) contracted for by the Department of Transportation, Harbors Division; and (b) paid by the Applicant.

Annual Rental for Second Five (5)-Year Period (Years 6 through 10): During each of the sixth (6th) through and including the tenth (10th) years of the Lease term, beginning upon the first day of the sixth (6th) year of the Lease term, LESSEE shall pay to LESSOR, for its occupancy and use of the Premises, an annual rental equal to the sum of the product of the annual rental for the fifth (5th) year of the Lease term and 115%.

Annual Rental for Third Five (5)-Year Period (Years 11 through 15): To be determined by an independent real property appraiser who is licensed by the State of Hawaii as a "Certified General Appraiser" whose services shall be contracted for and paid by the Department of Transportation, Harbors Division.

Annual Rental for Fourth Five (5)-Year Period (Years 16 through 20): During each of the sixteenth (16th) through and including the twentieth (20th) years of the Lease term, beginning upon the first day of the sixteenth (16th) year of the Lease term, LESSEE shall pay to LESSOR, for its occupancy and use of the Premises, an annual rental equal to the sum of the product of the annual rental for the fifteenth (15th) year of the Lease term and 115%.

Annual Rental for Fifth Five (5)-Year Period (Years 21 through 25): To be determined by an independent real property appraiser who is licensed by the State of Hawaii as a "Certified General Appraiser" whose services shall be contracted for and paid by the Department of Transportation, Harbors Division.

Annual Rental for Sixth Five (5)-Year Period (Years 26 through 30): During each of the 26th through and including the 30th years of the Lease term, beginning upon the first day of the 26th year of the Lease term, LESSEE shall pay to LESSOR, for its occupancy and use of the Premises, an annual rental equal to the sum of the product of the annual rental for the 25th year of the Lease term and 115%.

Annual Rental for Seventh Five (5)-Year Period (Years 31 through 35): To be determined by an independent real property appraiser who is licensed by the State of Hawaii as a "Certified General Appraiser" whose services shall be contracted for and paid by the Department of Transportation, Harbors Division.

WAIVER OF LEASE RENTAL:

The provisions of the lease require the lessee to make substantial improvements to the premises, including, without limitation, constructing and installing all interior and exterior utility lines, including equipment and appurtenances necessary for the purpose of the lease. As such, the lessee's obligation to pay rent to the State during the period of such construction shall be waived for a period not to exceed one year, and the waiver of rental shall terminate prior to one year, should the lessee occupy the premises and commence operations.

PERFORMANCE BOND:

Sum equal to at least one-quarter (1/4) of the then annual ground lease and easement rental then in effect.

MINIMUM IMPROVEMENT REQUIREMENT:

\$50,000,000.00

CHAPTER 343, HRS - ENVIRONMENTAL ASSESSMENT AND
SPECIAL MANAGEMENT AREA REQUIREMENTS:

February 23, 2007	Imperium submits Draft Environmental Assessment (EA) to DOT-Harbors Division
April 8, 2007	Notice of availability of Draft EA published in Office of Environmental Quality Control (OEQC) Bulletin
May 8, 2007	Close of 30-day Public and Agency Review and Comment Period
May 22, 2007	Imperium submits Final EA to DOT-Harbors Division
June 22, 2007	DOT-Harbors Division memorandum to OEQC notifying of a Finding of No Significant Impact (FONSI)

July 3, 2007	City and County of Honolulu's Department of Planning and Permitting (DPP) formally accepts Imperium's Application for a Special Management Area (SMA) Use Permit for processing (SMP No. 2007/SMA-35)
July 8, 2007	Finding of No Significant Impact (FONSI) published in the OEQC Bulletin
July 31, 2007	DPP conducts public hearing on Imperium's SMA application
August 9, 2007	DPP transmits Findings of Fact, Conclusions of Law and Recommendation to Honolulu City Council chair
September 4, 2007	City Council Zoning Committee holds meeting and votes unanimously to recommend approval of Resolution 07-252 (granting a SMA Use Permit to construct and operate a biodiesel facility) by full council
September 19, 2007	City Council approves Resolution 07-252

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

At its meeting held on October 26, 2007, the Land Board deferred this request (Item M-4) to its November 16, 2007 meeting.

Imperium Renewables Hawaii LLC (Imperium Hawaii) is a Hawaii limited liability company, the sole member of which is Imperium Renewables, Incorporated (Imperium), a Washington corporation. Imperium designs, develops, builds, owns and operates biodiesel production facilities capable of consistently producing industrial-scale quantities of biodiesel from multiple feedstocks that exceed industry quality standards. Imperium has proprietary processes and technological innovations, the ability to utilize multiple feedstocks, and internal project engineering expertise. Imperium has two facilities in the State of Washington, Imperium Grays Harbor located in Hoquiam, Washington and Seattle Biodiesel located in Seattle, Washington. Imperium Grays Harbor is a 100 million gallon per year nameplate capacity facility and is currently the largest pure play biodiesel production facility on the West Coast. Seattle Biodiesel is a 5 million gallon per year

nameplate capacity production facility, has been operational since 2005, and is a BQ9000 certified facility. With the opening of Imperium Grays Harbor, Seattle Biodiesel will transition into a research and development facility for next generation feedstocks.

Imperium Hawaii will also be a 100 million gallon per year nameplate capacity facility and will be similar in construction to that of Imperium Grays Harbor. Imperium Grays Harbor was constructed at a cost of approximately \$78 million and the construction costs for the Imperium Hawaii facility is estimated to be \$95 million.

The purpose of this bio-fuel manufacturing facility is to provide a renewable alternative to diesel petroleum. The facility will provide Hawaii with a sustainable fuel, which will help decrease its dependence on foreign oil. It will also provide 50 full time jobs to leeward side of Oahu. The bio-diesel production facility will be capable of producing 100 million gallons per year of bio-diesel fuel from vegetable oil. The feedstocks to be converted into bio-diesel fuel will all be brought to this facility by either barge or ship and interisland transportation of the biodiesel will also be by barge or ship.

Imperium Hawaii's Kalaeloa Barbers Point Harbor (KBPH) facility will have the capacity to use different feedstock and is not limited to palm oil or any one feedstock. Imperium Hawaii's business plan capitalizes on the facility's ability to be feedstock flexible and the choice of feedstock for KBPH will depend on market conditions in 2009 when the facility comes on line and on its contracts with major purchasers of biodiesel. Depending on these factors, soy, canola and palm may be used initially. Any palm oil used will be palm oil that is positive for the environment and that is sustainably produced from sources certified by the Roundtable on Sustainable Palm Oil ("RSPO"). Any supplier of palm oil to Imperium Hawaii will be required to be RSPO members in good standing and they will be required to contractually agree to these requirements in Imperium Hawaii's purchase contracts. The RSPO was founded by the World Wildlife Fund and is a multi-stakeholder group with members from the entire supply chain and environmental non-government organization ("NGO") members in addition to the World Wildlife Fund.

As new crops become available and the Lessee is able to move to second and third generation non-food feedstocks like jatropha and algae, the Lessee's Kalaeloa plant will be able to use these new feedstocks. The Lessee is working with both the government and private sector in Hawaii to assist in creating Hawaii sources of feedstock supply. At the Lessee's bio diesel facility in Washington State the Lessee is currently using only canola oil and will continue to be flexible in its use of vegetable oils dependent on market conditions and customer demands.

The facility's main process area would include reactors, condensers, and tanks; distillation column; hot oil heaters; control room; electrical room; maintenance shop; and cooling tower.

The tank farm would include 17 tanks ranging in capacity from 100,000 gallons to two million gallons. Future construction of four two million gallon oil or bio-diesel tanks would be possible.

Under Executive Order No. 3383, the subject land was set aside for the following public purposes: Piers and Shoreside Facilities Purposes. Also under Hawaii Revised Statutes Section 171-59(b), the disposition of public lands for maritime and maritime-related operations may be negotiated without regard to the limitations of subsection 171-59(a), i.e., without the necessity of a finding by the Board of Land and Natural Resources that the public interest demands it and without the notice requirements specified in the rest of said subsection (a) and without regard to the limitations set forth in Hawaii Revised Statutes Section 171-16(c), i.e., public notice of disposition by negotiation. The term "maritime-related" is defined in Subsection 171-59(b) as "a purpose or activity that requires and is directly related to the loading, off-loading, storage or distribution of goods and services of the maritime industry." Both goods and services of the maritime industry are required in connection with the applicant's operations. As mentioned, feedstock will be imported through the maritime industry. Further, pursuant to Section 171-59(b), Hawaii Revised Statutes, relating to Disposition by negotiation, a direct lease disposition to Imperium will encourage competition within the maritime-related industries on the island of Oahu by giving consumers a bio-diesel fuel alternative to petroleum-based diesel fuels currently being refined in Hawaii.

In addition, bio-fuels produced by the applicant will also be transported through the maritime industry. For these purposes, the applicant will construct improvements to our harbor facilities and the land will be used for the purposes set forth in Executive Order No. 3383. Approximately 105 million gallons of source oil per year would be provided to the facility by ship or barge, via pipelines from the harbor, or by container or truck. Biodiesel produced by the applicant will also be shipped to the neighbor islands and elsewhere by the maritime industry.

All applicable Federal, State, City and County permits will be obtained prior to construction.

RECOMMENDATION:

That the Board:

Authorize the Department of Transportation to issue a direct lease to Imperium Renewables Hawaii LLC, subject to:

1. Terms and conditions herein outlined, which are by reference incorporated herein;
2. Such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State; and,

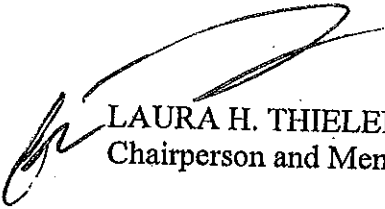
3. Review and approval of the Department of the Attorney General as to the lease form and content.

Respectfully submitted,


BARRY FUKUNAGA
Director of Transportation

Attachment

APPROVED FOR SUBMITTAL:


LAURA H. THIELEN
Chairperson and Member

The Board:

Amendment to Staff Recommendation:

Two proposals to add two new conditions to the recommendation. 1. The Lessee shall use commercially reasonable best efforts as new crops become available to move to second and third generation non-food feedstocks like jatropha and algae, or other locally available feedstocks with the goal of using 10% of locally grown feedstock in the first decade. 2. The Lessee shall work with the government and private sector in Hawaii to develop local feedstocks in Hawaii and contribute a minimum of 3.5 million during the term of the lease to fund local research efforts at a rate of no less than \$100,000 per year.

Unanimously approved as amended. (Edlao, Gon)

